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Advanced Topics in Criminal Appellate Law Practice

September 21, 2018

**Original Actions
Magistrate C. Michael Walsh**

	Habeas Corpus	Mandamus	Procedendo	Prohibition	Quo Warranto
What courts?	Supreme Court Appellate Courts Common Pleas	Supreme Court Appellate Courts Common Pleas	Supreme Court Appellate Courts	Supreme Court Appellate Courts	Supreme Court Appellate Courts
What authority?	Ohio Constitution R.C. 2725.01	Ohio Constitution R.C. 2731.01	Ohio Constitution	Ohio Constitution	Ohio Constitution R.C. 2733.01
What does it do?	Obtain freedom from illegal detention.	Compels performance of a duty that a public servant is under a clear legal duty to perform.	Commands court to proceed where court has refused to act or unnecessarily delayed.	Restrains unauthorized exercise of judicial power.	Obtain an office by ousting a usuper, or Stop corporation from exercise of powers it does not have or improper exercise of its powers.
What is the test?	Unlawful restraint of petitioner's liberty, or judgment void because trial court lacked jurisdiction.	Clear legal duty to act and clear legal right to require respondent to act.	Clear legal right to require respondent to proceed and clear legal duty of respondent.	About to exercise judicial power, that exercise is unauthorized by law, and injury.	Office unlawfully held by respondent and relator entitled to the office.
What if there is an adequate remedy?	Writ not available.	Writ not available.	Writ not available.	Writ available <i>if</i> the court patently and unambiguously lacked jurisdiction.	Writ not available.
What special requirements are there?	- verified complaint - commitment papers	- brought on relation of the state - caption include names and addresses			Brought by individual with claim to the office, or attorney general or county prosecutor.
What respondent?	Official or other person holding the petitioner.	Public offices, including courts, and public agencies.	Court.	Court or tribunal.	Individual, public officer, or corporation.

Extraordinary Writ	Petitioner must show...
Habeas corpus	(1) an unlawful restraint of his liberty, and (2) no adequate remedy in the ordinary course of the law.
Mandamus	(1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law.
Procedendo	(1) a clear legal right to require respondent to proceed, (2) a clear legal duty by the respondent judge to proceed, and (3) the lack of an adequate remedy in the ordinary course of the law.
Prohibition	(1) the court is about to exercise judicial power, (2) the exercise of that power is unauthorized by law, and (3) the denial of the writ will result in injury for which no other adequate remedy exists.
Quo warranto	(1) the office is being unlawfully held and exercised by respondent, and (2) that relator is entitled to the office.

Habeas Corpus

Can be used for	Cannot be used for
Custody of a child.	Challenge breach of plea agreement.
Denial of counsel resulting in denial of due process in noncriminal involuntary civil commitment proceedings.	Challenge parole conditions.
Excessive bail following conviction.	Double jeopardy violation.
Excessive pretrial bail.	Due process in parole hearing.
Failure to set bail following conviction.	Ex post facto challenges.
Where prisoner's maximum sentence has expired and he is being held unlawfully.	Failure to apply res judicata to bar proceedings.
	Ineffective assistance of appellate counsel.
	Jail time credit.
	Mental incompetence of defendant in criminal case.
	Sentencing errors.
	Speedy trial claim.
	Validity or sufficiency of an indictment.
	Where prisoner has not served his maximum sentence.